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Hearing Date: To Be Determined
Objection Date: To Be Determined

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
WORLDCOM INC, <i>et al.</i> ,	:	Case No. 02-13533 (AJG)
	:	
	:	(Jointly Administered)
	:	
Debtors.	:	
	:	
	:	

**AMENDED APPLICATION OF THE DISSENTING MCI BONDHOLDERS
PURSUANT TO 11 U.S.C. § 503(b) FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSES INCURRED IN MAKING A
SUBSTANTIAL CONTRIBUTION IN THESE CHAPTER 11 CASES**

TO: THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE:

The Dissenting MCI Bondholders¹ submit this amended application for allowance of an administrative expense claim, pursuant to Bankruptcy Code § 503(b)(3)(D) and (b)(4), in

¹ The Dissenting MCI Bondholders consist of those institutions and individuals listed in the most recent Bankruptcy Rule 2019 Statement, dated August 27, 2003, filed by Kramer Levin Naftalis & Frankel LLP. As noted in that Statement, the Dissenting MCI Bondholders collectively held

the amount of \$6,969,278.39 (the “Requested Fees and Expenses”) in respect of the substantial contribution they have made to the Debtors’ reorganization. In support thereof, the Dissenting MCI Bondholders respectfully represent as follows:

Preliminary Statement

The Debtors’ final plan of reorganization, which this Court confirmed in October 2003 (the “Plan”), differs strikingly from the plan the Debtors initially filed in April 2003 (the “Initial Plan”) in its treatment of a significant class of creditors, the holders of the Quarterly Income Preferred Securities (the “QUIPS”) that MCI Communications Corporation (“MCIC”) issued in 1996 through a financing subsidiary. The Initial Plan proposed to make no distribution whatsoever to the holders of the QUIPS. In contrast, the Plan provides for approximately \$334 million of value to be distributed to this class of creditors, a blended average recovery of 44.5 cents on the dollar.

This modification to the Plan’s terms, and the resulting \$334 million benefit to all QUIPS holders, was achieved through the efforts of a small group of QUIPS holders -- the Dissenting MCI Bondholders -- in challenging the appropriateness of the Initial Plan and then, after substantial litigation, negotiating the QUIPS settlement incorporated in the Plan. At the time the Initial Plan was filed, holders of QUIPS had no genuine representation in this chapter 11 case. Their interests were not meaningfully represented on the Official Committee of Unsecured Creditors (the “Creditors’ Committee” or “Committee”), nor had their interests been addressed in the negotiations that preceded the filing of the Initial Plan. Moreover, the QUIPS were overwhelmingly held by individual holders (mostly retirees), rather than institutions, as a result

approximately \$276 million face amount of Quarterly Income Preferred Securities of MCI Communications Corporation as of August 18, 2003.

of having been issued in \$25 lots and marketed as suitable retirement investments; the Debtors have advised us that the QUIPS class has approximately 30,000 members. Absent the efforts of the Dissenting MCI Bondholders, this widely-held class would effectively have been disenfranchised in this chapter 11 case, and the confirmed Plan, like the Initial Plan, would likely have paid zero to this class of creditors.

By increasing the recovery of this otherwise unrepresented class from zero to \$334 million, the Dissenting MCI Bondholders undeniably made a substantial contribution to this chapter 11 case. Indeed, this Court recognized, last Spring, that the Dissenting MCI Bondholders would be entitled to a “substantial contribution” award if they prevailed in their challenge to the Initial Plan. The Court made this observation at a May 28, 2003 hearing on a motion filed by the QUIPS’ indenture trustee and joined by the Dissenting MCI Bondholders, seeking the appointment of an official creditors’ committee for MCIC and its subsidiaries (collectively, “MCI”). The Court denied this motion, but, in doing so, it acknowledged the indenture trustee’s and the Dissenting MCI Bondholders’ concerns that mounting a serious legal challenge to the Initial Plan’s treatment of the QUIPS would be extremely expensive. The Court observed that, if movants’ challenge to the terms of the Initial Plan ultimately prevailed, they would be entitled to a substantial contribution award:

[T]he movants have an avenue to participate at the planned confirmation hearing and if their contentions are correct concerning substantive consolidation and intercompany debt, they have a basis for compensation under Section 503(b).

Transcript of May 28, 2003 Hearing at 153.

Particularly in light of the magnitude of the benefits obtained for the QUIPS class, the amount of attorneys’ and accountants’ fees and expenses for which the Dissenting MCI

Bondholders seek reimbursement -- \$6,969,278.39, or approximately 2% of the \$334 million benefit to the QUIPS -- is eminently reasonable. As detailed below, the task of challenging the Initial Plan's treatment of the QUIPS required enormous efforts by the Dissenting MCI Bondholders' attorneys and accountants, including (i) extensive review and "disentangling" of the Debtors' highly complex intercompany financial records; (ii) extensive analysis of the Debtors' assertion that, even if MCI's financial affairs could be "disentangled" from those of WorldCom, MCI would still be insolvent due to more than \$20 billion in royalties that it supposedly owed to WorldCom; (iii) taking or defending more than 40 fact depositions and 10 expert depositions on these and other subjects; (iv) extensive legal research, analysis and briefing concerning the substantive consolidation proposed by the Initial Plan; and (v) preparation for a substantive consolidation trial anticipated to last up to six weeks.

One further consideration also favors a grant of the requested substantial contribution award. The Court will recall that the settlement ultimately struck between the Dissenting MCI Bondholders and the Debtors, at 4:00 a.m. on the second day of the confirmation hearing, contained a \$19 million concession by the Dissenting MCI Bondholders designed to resolve not only their own objections to the Plan, but also those of the Ad Hoc MCI Trade Claims Committee (the "Trade Claims Committee"). Specifically, the settlement incorporated in the Plan provided for the QUIPS to elect, by voting in favor of the Plan, to contribute \$19 million of the distribution to which they otherwise would have been entitled to members of the Trade Claims Committee. As the Debtors' counsel subsequently observed at the confirmation hearing, these Plan provisions gave the QUIPS the option either to vote "no" and retain the \$19 million (in which case the Plan, including *all* of these benefits to QUIPS holders, would be confirmed by cram-down) or, instead, to vote "yes" and receive \$19 million less in distributions. The election

of the Dissenting MCI Bondholders and other QUIPS holders to contribute \$19 million of recoveries they would have been entitled to keep, in order to facilitate the Debtors' settlement with the Trade Claims Committee and thereby avoid substantial confirmation litigation, contributed significantly to the Debtors' ability to achieve a largely consensual plan. Wholly apart from the benefits obtained for members of the QUIPS class, this contribution to the success of the Debtors' reorganization warrants a substantial contribution award.

Factual Background

1. On July 21, 2002, WorldCom, Inc. and certain of its direct and indirect subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11. The Debtors have continued to conduct their businesses and manage their property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On July 29, 2002, the Creditors' Committee was appointed to represent the interests of the Debtors' unsecured creditors. No member of the Creditors' Committee was predominantly a holder of QUIPS, nor did any member of the Committee purport to represent the QUIPS' interests in negotiations over the terms of a plan of reorganization.

2. WorldCom, Inc. is a holding company. The great bulk of the assets and earnings of the Debtors reside not at WorldCom, Inc., but instead at MCI. WorldCom acquired MCI in September 1998, for consideration totaling \$40 billion. At the time, MCI was the second largest carrier of long-distance telecommunications services in the U.S. and the second largest carrier of international long-distance telecommunications services in the world, with annual EBITDA in the vicinity of \$4 billion. At all times since that acquisition, MCIC and its subsidiaries have continued to be entities legally separate from WorldCom, Inc.

3. In May 1996, two years before it was acquired by WorldCom, MCI had issued the QUIPS. While the QUIPS are preferred stock issued by a financing subsidiary of MCIC, functionally the QUIPS represent subordinated debt claims against MCI.² At the time of their issuance, the QUIPS were perceived to be a conservative investment with minimal default risk and an attractive 8% return. In addition, the QUIPS were issued in unusually small units of \$25 par value so as to appeal to retail investors. Individual investors planning for retirement purchased many of the QUIPS.³ Indeed, the Debtors have advised us that the QUIPS class has approximately 30,000 members, the vast majority of whom are presumably individuals, rather than institutions.

4. On April 14, 2003, approximately nine months after commencing these chapter 11 cases, the Debtors filed the Initial Plan. The filing of the Initial Plan was preceded by extensive negotiations, and it incorporated settlements of disputes among many of the Debtors' most significant constituencies. However, representatives of QUIPS holders were not included in these negotiations, and the Initial Plan provided for the holders of QUIPS to receive to no distributions at all.

² MCI issued the QUIPS through a somewhat complex mechanism. First, it created a wholly owned Delaware statutory business trust called MCI Capital I, of which MCI owned all the common stock. MCI Capital I then issued \$750 million aggregate principal amount of 8% Cumulative Quarterly Income Preferred Securities -- the QUIPS -- and used the proceeds to purchase \$750 million of 8.00% Junior Subordinated Deferrable Interest Debentures (the "QUIDS") issued by MCI Communications Corp. Thus, the QUIDs were debt instruments of MCI that earn 8% annual interest, payable quarterly but deferrable so long as MCI does not pay dividends. MCI Capital Trust I merely held the QUIDs and distributed the resulting cash flow to the QUIPS holders.

³ For example, Harry Reigenstreif, a member of the Dissenting MCI Bondholders, was a New York City high school teacher when he purchased \$50,000 worth of QUIPS in 1996. He is now retired, and the Initial Plan would have eviscerated a significant portion of his retirement savings.

5. The Debtors and the Creditors' Committee defended the Initial Plan's treatment of QUIPS holders on two independent grounds. First, the Initial Plan provided for the substantive consolidation of MCI with WorldCom, the result of which was to render the consolidated entity insolvent and to deprive the QUIPS holders of any entitlement to payment. The Debtors and the Committee asserted that substantive consolidation was warranted because, among other things, the Debtors' books and records did not reliably account for the approximately \$1 trillion of intercompany transactions among the various Debtors; as a result, the assets and finances of MCI allegedly were "hopelessly entangled" with those of WorldCom, Inc. and its other subsidiaries. Second, the Debtors and the Committee contended that, even in the absence of substantive consolidation, MCI was insolvent as a result of approximately \$20 billion in royalties that MCI supposedly owed to WorldCom.

6. To obtain a recovery for QUIPS holders, the Dissenting MCI Bondholders were compelled to undertake a very substantial litigation effort, on an expedited basis, to challenge both the legal and the factual underpinnings of the Initial Plan. This litigation effort is summarized below, as is the settlement that the Dissenting MCI Bondholders eventually negotiated on the morning of the second day of the confirmation hearing, which increased the recoveries to QUIPS holders from zero to \$334 million. That settlement was incorporated in the Plan, which this Court confirmed by order dated October 31, 2003. On April 20, 2004, the Plan became effective.

**The Dissenting MCI Bondholders'
Litigation on Behalf of QUIPS Holders**

7. Within one week of the Debtors' filing of the Initial Plan, the initial members of the Dissenting MCI Bondholders had organized, filed a motion to appoint a trustee

(the “Trustee Motion”), and served discovery requests in support of that motion. The Trustee Motion rested principally on the same substantive challenges to the merits of the Initial Plan that subsequently formed the basis for the Dissenting MCI Bondholders’ opposition to confirmation. The motion contended that the Initial Plan’s treatment of QUIPS holders was unlawful, both because substantive consolidation was not warranted and because WorldCom’s purported royalty claims against MCI (which supposedly rendered MCI insolvent even in the absence of substantive consolidation) were invalid. The motion further argued that, by filing the Initial Plan without proper investigation of these issues, the Debtors had abdicated their fiduciary duties to QUIPS holders, thereby warranting the appointment of a trustee. This Court denied the Trustee Motion, ruling among other things that the grounds asserted in support of that motion were, at bottom, confirmation objections.⁴

8. Building on the factual and legal arguments they had developed and the discovery they had obtained in litigating the Trustee Motion, the Dissenting MCI Bondholders moved quickly to assemble a team of legal and accounting professionals of sufficient sophistication and depth to mount a serious challenge to the Initial Plan in the limited time available. Having already retained BDO Seidman as their consulting accountants, the Dissenting

⁴ Shortly after the Trustee Motion was filed, HSBC Bank, the successor indenture trustee for the QUIPS, moved for the appointment of an official creditors’ committee to represent the interests of MCI’s creditors. The Dissenting MCI Bondholders filed a short joinder in HSBC’s motion and argued in support of this motion at the May 28, 2003 hearing, but otherwise took no action (and incurred no legal fees) in connection with it. A central objective of this motion, like the Trustee Motion, was to have the cost of representing QUIPS holders in the bankruptcy borne by the Debtors’ estates, rather than by individual holders or the indenture trustee. As noted above, while the Court denied this motion, the Court recognized the legitimacy of the movants’ concerns about the enormous expense involved in mounting a litigation challenge to the Initial Plan. The Court observed that, “if [the movants’] contentions are correct concerning substantive consolidation and intercompany debt, they have a basis for compensation under Section 503(b).” Transcript of May 28, 2003 Hearing at 153.

MCI Bondholders hired two additional consulting accounting firms: Chicago Partners, a firm associated with the Dissenting MCI Bondholders' lead testifying accountant, and Software Dynamics, a firm with particular expertise in software accounting applications. (Collectively, these three firms are referred to as the "Consulting Accountants.") The Dissenting MCI Bondholders also retained three distinguished accountants to serve as testifying experts: Roman Weil, a senior professor of accounting at the University of Chicago and one of the nation's foremost accounting scholars; Arthur Siegel, who oversaw the audit practice of Price Waterhouse for many years and was Executive Director of the Independent Standards Board; and Charles Profit, an accountant and leading expert on software accounting applications. Each of these three testifying experts (collectively, the "Testifying Accountants") is a Certified Public Accountant and an experienced accounting practitioner.⁵ The Dissenting MCI Bondholders also retained nationally prominent trial lawyer Dan K. Webb and his firm, Winston & Strawn, to serve as co-counsel with Kramer Levin in challenging confirmation of the Initial Plan. (Collectively, Kramer Levin, Winston & Strawn, the Consulting Accountants and the Testifying Accountants are referred to as the "Bondholders' Professionals.")

9. The Consulting Accountants, working closely with counsel and the Testifying Accountants, promptly embarked upon the daunting task of attempting to "disentangle" the accounting entries contained in the Debtors' notoriously complex intercompany books and records. This effort, while extremely time-consuming, ultimately proved successful:

⁵ The Dissenting MCI Bondholder also retained a fourth testifying expert, Kenneth Lehn, to address issues relating to the valuation of WorldCom and MCI. Mr. Lehn is an economist, not an accountant, and his fees are therefore not compensable under Bankruptcy Code § 503(b)(4).

a. The original argument offered by the Debtors and the Committee in support of substantive consolidation, in the Disclosure Statement filed with the Initial Plan, was that, of the approximately \$1 trillion in intercompany balances reflected on the general ledger, the Debtors' and the Committee's professionals had been unable to identify the counterparties with respect to \$380 billion of intercompany transfers. The Consulting Accountants expended very substantial resources searching for solutions to this problem, and their efforts met with a striking degree of success. The results achieved by two of the Consulting Accountants, BDO Seidman and Chicago Partners, were summarized by Professor Weil in his expert report, which concluded that (i) counterparties *could* be identified with respect to most of the \$380 billion of transfers, and (ii) the remainder represented unenforceable intercompany claims. Similarly, the expert report of Charles Profit stated that he and his firm (Software Dynamics) had been able to identify most counterparties, and that, through the application of fairly rudimentary, albeit somewhat time-consuming, processes, the remainder could be reliably identified.⁶

b. After the Dissenting MCI Bondholders disclosed (in their substantive consolidation brief) their success in solving the "unknown counterparties" problem, the Debtors supplemented their initial arguments in support of substantive consolidation. The Debtors contended that, even if counterparties could be identified, their intercompany books and records would still be grossly unreliable, due to severe breakdowns in the internal controls that

Consequently, the Dissenting MCI Bondholders are not seeking to obtain reimbursement of Mr. Lehn's fees or disbursements.

⁶ A very large portion of the fees of BDO Seidman, Chicago Partners and Software Dynamics were devoted to these projects. As noted below, their cumulative fees are modest compared to those expended by the Creditors' Committee's professionals in addressing the same "entanglement" issues.

had governed the accounting of intercompany transactions. In response, the Consulting Accountants, under Professor Weil's supervision, undertook a new analysis, which sought to prove MCI's solvency based entirely on verifiable information *outside* of the Debtors' intercompany books and records. To this end, the Consulting Accountants comprehensively identified all of the cash inflows to WorldCom and all of WorldCom's uses of this cash. As summarized in Professor Weil's rebuttal report, this cash flow analysis demonstrated, without placing any reliance on the Debtors' supposedly infirm intercompany books and records, that WorldCom could not have had an intercompany claim against MCI sufficient to render MCI insolvent.

c. An independent response to the Debtors' emphasis on the inherent unreliability of their intercompany accounting was developed and presented by Mr. Siegel, with the assistance of the Consulting Accountants. Applying basic principles of accounting, Mr. Siegel demonstrated, in his expert report, that WorldCom's balance sheet could not have understated intercompany receivables by a magnitude sufficient to put MCI's solvency in question, since there was no plausible place an error of the requisite size could have been concealed.

10. In addition to addressing to the central "entanglement" issue, the Dissenting MCI Bondholders' accounting professionals devoted substantial efforts to developing a response to the Debtors' and the Committee's argument that, even in the absence of substantive consolidation, MCI was insolvent as a result of approximately \$20 billion in royalties that MCI supposedly owed to WorldCom. Drawing on the work of BDO Seidman and Chicago Partners, who exhaustively analyzed the Debtors' complex intercompany royalty calculations, Professor Weil's expert report marshaled extensive evidence that the royalty claims against MCI were

unenforceable. (The Examiner, Dick Thornburgh, subsequently adopted many of these arguments in his Final Report.)

11. The complexity and great importance of the issues addressed by the Consulting Accountants and the Testifying Accountants is evidenced by the very substantial resources expended by the Debtors and the Creditors' Committee on the same topics. For example, the Creditors' Committee's forensic accountants expended more than 11,000 hours and in excess of \$4.5 million -- almost double the total fees incurred by the Dissenting MCI Bondholders' Consulting Accountants -- in their analysis of the alleged hopeless entanglement of the Debtors' books and records. The Debtors, professionals, too, expended large amounts of time analyzing these "entanglement" issues, as well as the royalties that MCI allegedly owed to WorldCom.

12. An intensive effort was also required by the Dissenting MCI Bondholders' counsel. In addition to counsel's work with the Consulting Accountants and Testifying Accountants, a substantial team of lawyers was required to work almost around the clock for several months to handle the massive expedited discovery that took place over the summer of 2003. Voluminous amounts of documents were produced by the Debtors, the Committee and other parties, and much time was needed to review and analyze these documents. This document review was followed by more than 40 depositions of fact witnesses, including the depositions of about 20 witnesses proffered by the Debtors in response to a Rule 30(b)(6) deposition notice, as well as about 20 other depositions of fact witnesses. These fact depositions were followed by extensive expert disclosure: ten initial expert reports were prepared and exchanged (three by the Debtor, one by the Committee, four by the Dissenting MCI Bondholders and two by the Trade Claims Committee), followed by rebuttal reports and ten expert depositions.

13. Preparation for the confirmation hearing, which the Debtors advised the Court could last up to six weeks, was also a huge task. The Debtors' and Creditors' Committee's witness list together contained the names of more than 30 witnesses. The Dissenting MCI Bondholders' witness list included an additional seven names, and witness lists submitted by other parties contained more than 50 additional names.

14. Briefing of the challenging legal and factual issues posed by the Debtors' proposed substantive consolidation of MCI with WorldCom also required a very substantial effort. The Dissenting MCI Bondholders filed a 58-page memorandum of law on substantive consolidation, as well as a shorter confirmation objection addressing other issues. The complexity of the substantive consolidation issues is evidenced by the length of the briefs filed by the Debtors and the Creditors' Committee in response: The Debtors filed a 135-page substantive consolidation brief, and the Creditors' Committee devoted a substantial portion of its 76-page confirmation brief to that topic.⁷

⁷ In addition to their efforts in opposition to confirmation of the Initial Plan, counsel for the Dissenting MCI Bondholders devoted a modest amount of time to a related matter, the Debtors' proposed settlement with the Securities and Exchange Commission. Under that settlement, the Debtors agreed to pay \$750 million to the SEC out of the estates of *all* Debtors, including MCI -- even though no MCI entity was named as a defendant in the SEC's District Court enforcement action, nor had any allegations of wrongdoing been made against any MCI entity. The Dissenting MCI Bondholders opposed that settlement on several grounds, including that it improperly used MCI's assets to satisfy claims that the SEC had asserted against WorldCom, Inc. only, and not against MCI. This Court approved the settlement, and the Dissenting MCI Bondholders appealed that decision to the District Court. This appeal, along with the Dissenting MCI Bondholders' objections to confirmation, was eventually resolved as part of the Dissenting MCI Bondholders' settlement with the Debtors. In exchange for the consideration received under the Plan, the Dissenting MCI Bondholders agreed to (and did) dismiss this appeal.

**The QUIPS Settlement Obtained by
the Dissenting MCI Bondholders**

15. Due to large gulf between the parties' positions concerning the proper treatment of the QUIPS, serious settlement negotiations between the Dissenting MCI Bondholders and the Debtor did not commence until shortly before the commencement of the confirmation hearing. At 4:00 a.m. on the second day of the confirmation hearing, after more than 30 hours of negotiations over the course of the preceding four days, the Dissenting MCI Bondholders reached agreement with the Debtors and the other principal constituencies on the terms of a settlement. This settlement, which was subsequently incorporated in the Plan, provided for approximately \$334 million to be distributed to QUIPS holders, for a blended average recovery of 44.5 cents on the dollar. Specifically, the settlement, and consequently the Plan, gave each QUIPS holder the right to elect either (a) a 43.6% all-cash recovery or (b) a 44% recovery in new bonds plus approximately 1.6% in cash.

16. The Dissenting MCI Bondholders' settlement with the Debtors also contained a feature designed to facilitate the settlement that the Debtors simultaneously reached with the Trade Claims Committee. A condition of the latter settlement was that \$19 million be "gifted" by QUIPS holders to the Trade Claims Committee. To that end, the Dissenting MCI Bondholders' settlement gave QUIPS holders the option either to receive an additional \$19 million in distributions, on top of the \$334 million in distributions just noted, or alternatively to contribute this additional \$19 million to members of the Trade Claims Committee. As subsequently noted by the Debtors' counsel at the confirmation hearing, QUIPS holders could have kept the \$19 million -- by voting "no," in which case the Plan would have been confirmed by cram-down -- but they instead chose, by voting overwhelmingly to approve the Plan, to give up this increased recovery so as to facilitate the overall success of the Debtors' global settlement

and the goal of a consensual reorganization. *See* October 15, 2003 Hearing Transcript at 201-203.

**THE DISSENTING MCI BONDHOLDERS
AND THEIR PROFESSIONALS HAVE MADE
A SUBSTANTIAL CONTRIBUTION TO THESE CASES**

17. Section 503(b) of the Bankruptcy Code provides that a creditor that has made a “substantial contribution” to a chapter 11 case shall receive an administrative expense claim equal to its actual and necessary expenses, including the reasonable fees and expenses of its attorneys and accountants. 11 U.S.C. § 503(b)(3)(D) and (b)(4).

18. Compensation based on a substantial contribution is designed to promote meaningful participation in the reorganization process while discouraging mushrooming administrative expenses. *In re Granite Partners, L.P.*, 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997); *see also In re Richton Intern. Corp.*, 15 B.R. 854, 855-56 (Bankr. S.D.N.Y. 1981). Compensable services under this provision are those that foster the reorganization and provide substantial benefit to the estate and its creditors, in contrast to those that retard or interrupt the process. *See Granite*, 213 B.R. at 445-46; *In re Best Prods. Co., Inc.*, 173 B.R. 862, 865 (Bankr. S.D.N.Y. 1994).

19. Most typically, a substantial contribution award is made where a party either took an active role in facilitating negotiation and successful confirmation of a plan, or opposed an earlier plan formulation and, as a result, the court confirmed a more favorable plan. *See Granite*, 213 B.R. at 446-47 (approving substantial contribution award to equity holders whose litigation efforts resulted in a more favorable plan) (collecting cases); *see also In re Lehal Realty Assocs.*, 112 B.R. 588, 590 (Bankr. S.D.N.Y. 1990) (“by having proposed and

consummated a creditor's liquidating plan, TCNJ is clearly entitled to [a substantial contribution award]”). In contrast, courts have found no substantial contribution where the services merely depleted estate assets without a corresponding greater benefit, *Best Prods. Co.*, 173 B.R. at 866, or materially diminished the recovery process, *see United States Lines*, 103 B.R. at 430.

20. Applying these standards, it is clear that the Dissenting MCI Bondholders have made a very substantial contribution to this chapter 11 case. Before the Dissenting MCI Bondholders organized, holders of QUIPS had no meaningful representation in the case. The 30,000 members of the QUIPS class did not have a representative on the Creditors' Committee, nor had the QUIPS' interests been addressed in the negotiations that preceded the filing of the Initial Plan. Not surprisingly, the Initial Plan provided for no distributions to QUIPS holders. Absent the efforts of the Dissenting MCI Bondholders, the QUIPS holders would have effectively been disenfranchised, and the confirmed Plan, like the Initial Plan, would likely have paid zero to this widely-held creditor class.

21. As a result of the Dissenting MCI Bondholders' efforts, this potentially enormous injustice to the QUIPS holders was averted, and the QUIPS will receive a very substantial recovery under the Plan -- approximately \$334 million, for a blended average recovery of 44.5 cents on the dollar. This result was achieved only as a result of the Dissenting MCI Bondholders' willingness to organize a very substantial litigation effort, and to invest very substantial sums in that litigation with no assurance that these expenditures would ever be recouped. In light of the success the Dissenting MCI Bondholders achieved for the QUIPS class, a substantial contribution award is amply warranted. Moreover, the approximately \$7 million of fees and expenses for which the Dissenting MCI Bondholders seek reimbursement is reasonable in amount, both in relation to the magnitude of the benefit obtained for the QUIPS class -- almost

50 times the total fees and expenses -- and in relation to the complexity and magnitude of the litigation effort that was required.

22. A further consideration that independently warrants a substantial contribution award is the central role played by the Dissenting MCI Bondholders in facilitating the Debtors' settlement with the Trade Claims Committee. The QUIPS settlement permitted QUIPS holders to receive an additional \$19 distribution, on top of the \$334 million distribution they actually received. As the Debtors' counsel subsequently observed at the confirmation hearing, the Plan gave the QUIPS the option to vote "no" and to retain this \$19 million, in which case the Plan would have been confirmed by cram-down. By voting in favor of the Plan, the Dissenting MCI Bondholders and other QUIPS holders elected to contribute this \$19 million so as to make possible the Debtors' settlement with the Trade Claims Committee, thereby averting substantial litigation and facilitating a largely consensual confirmation process.

Summary of Requested Fees and Expenses

23. By this Application, the Dissenting MCI Bondholders request reimbursement of the Requested Fees and Expenses incurred in connection with the substantial contribution they have made to these bankruptcy cases -- that is, their litigation efforts and eventual settlement on behalf of the QUIPS class, described above -- in the total amount of \$6,969,278.39. The Requested Fees and Expenses were incurred by the following attorneys and accountants:⁸

⁸ As noted above, the Dissenting MCI Bondholders are not seeking a substantial contribution award on account of the fees and expenses incurred by Kenneth Lehn, an economist they retained to review and give expert testimony on valuation issues.

Professional	Fees	Expenses	Total
Kramer Levin (Counsel)	\$2,482,306.50	\$390,586.82	\$2,872,893.32
Winston & Strawn (Counsel)	\$1,231,708.00	\$178,816.66	\$1,410,524.66
BDO Seidman (Consulting Accountants)	\$1,035,110.50	\$71,948.52	\$1,107,059.02
Chicago Partners (Consulting Accountants)	\$861,742.10	\$51,052.79	\$912,794.89
Roman L. Weil Associates Inc. (Testifying Accounting Expert)	\$360,312.50	\$4,703.41	\$365,015.91
Art Siegel (Testifying Accounting Expert)	\$94,000.00	\$258.00	\$94,258.00
Software Dynamics Ltd. - Charles Profit (Consulting Accountant; Testifying Accounting Expert)	\$181,462.50	\$25,270.09	\$206,732.59
TOTAL	\$6,246,642.10	\$722,636.29	\$6,969,278.39

24. The accompanying Declaration of Philip Bentley, a member of Kramer Levin, attaches detailed billing records supporting the fees and expenses incurred by each of the Bondholders' Professionals in making the substantial contributions described above.

25. The Requested Fees and Expenses have all been billed to the members of the Dissenting MCI Bondholders, *pro rata*, and substantially all of the Requested Fees and Expenses have been paid. If this Application is granted, each of the Dissenting MCI Bondholders will receive the benefit of the amount awarded to them, *pro rata*, based on the amounts they have paid to the various Bondholders' Professionals.

Notice

26. Notice of this Application has been provided to the United States Trustee, the Debtors, the Official Committee of Unsecured Creditors and all other parties who have requested such notices in these cases. The Dissenting MCI Bondholders submit that no other or further notice need be provided.

Waiver of Separate Memorandum of Law

27. Because the statutory and common law bases for the relief requested are adequately set forth herein, the Dissenting MCI Bondholders respectfully request a waiver of the requirement of a separate memorandum of law pursuant to Local Bankruptcy Rule 9013-1(b).

Conclusion

The Dissenting MCI Bondholders respectfully request that this Court enter an Order, in substantially the form filed herewith, authorizing and directing payment of the Requested Fees and Expenses as an administrative expense of the Debtors' estates, pursuant to Bankruptcy Code §503(b)(3)(D) and (b)(4), and that the Court grant the Dissenting MCI Bondholders such other and further relief as is just.

Dated: New York, New York
July 26, 2004

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